

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: Private Firm

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-153599-07

Date:

March 06, 2008

Re:

Legend

Decedent =

Son =

Daughter 1 =

Daughter 2 =

Spouse 1 =

Spouse 2 =

Grandchild 1 =

Grandchild 2 =

Grandchild 3 =

Grandchild 4 =

Grantor =

Grantor's Spouse =

Trust =

Trustee =

Year =

Date 1 =

Date 2 =

Date 3 =

a =

b =

c =

State =

State Statute =

Dear _____ :

This is in response to a letter dated November 30, 2007, from your authorized representative, in which you request rulings with respect to certain proposed disclaimers.

Facts

In Year, Grantor and Grantor's Spouse created the Trust for the benefit of Decedent. Year is prior to October 22, 1942. The instrument states that "[Grantor] and [Grantor's Spouse] are the parents of [Decedent] ... and it is the desire and purpose of the said [Grantor] and [Grantor's Spouse] to create an irrevocable trust, known as the [Decedent] Trust Estate, for the use and benefit of [Decedent]... ."

Article III, Section 1, provides that no beneficiary can require distribution of trust corpus or partition or termination of the trust.

Article III, Sections 2 and 3, state as follows:

Section 2: The death, insolvency or bankruptcy of the Beneficiary hereunder, or the transfer of her interest in any manner, or by descent or otherwise, during the continuance of this Trust, shall not operate as a dissolution of, nor terminate the Trust, nor shall it have any effect whatever upon said Trust Estate, its operation or mode of business, nor shall it entitle her heirs or assigns or representatives to take any action in the courts of law or equity against the Estate, its Trustees or property or its business operations of any kind, all of which shall remain intact and undisturbed thereby; but they shall succeed only to the rights of the original Beneficiary as herein set forth.

Section 3: At the time of the death of Beneficiary, her equitable interest in said Trust Estate, unless disposed of otherwise by said Beneficiary, shall pass to and vest in her heirs in accordance with the laws of descent and distribution then in force, applicable to the equitable interest of such Beneficiary in said Trust. (The term 'Beneficiary' applies not only to [Decedent] but to all her successors to beneficial interests under this trust).

Article IV, Section 3, provides that the Trust will terminate 21 years after Decedent's death, when the trustee will distribute the trust corpus among the then existing beneficiaries.

Article IV, Section 4, provides that the beneficiary may receive from time to time, a portion of the net profits accruing from time to time to the Trust, as the Trustee, acting with the advice and consent of the Advisory Board, may see fit to pay over and deliver to the beneficiary. No duty is imposed upon the Trustee to distribute net profits, but the power is conferred upon the Trustee, acting with advice and consent of the Advisory

Board, to do so, and in exercising this discretion, the Trustee and Advisory Board must give full consideration to the interest of both the beneficiary and the Trust Estate.

Decedent died on Date 1, survived by Son, Daughter 1, and Daughter 2. Pursuant to Article VI, Section 3, the Trust will terminate on Date 2.

Pursuant to Article III and Article IV of the Trust, each Beneficiary has three separate interests in the Trust which passed to him or her on the Decedent's death: (1) the right to receive net profits in the discretion of the Trustee and the Advisory Board (the Income Interest); (2) the right to dispose of his or her share of the Trust if the Beneficiary dies before the Trust terminates on Date 2 (the Power of Appointment); and (3) the right to receive his or her share of the Trust if living on Date 2 (the Termination Interest).

Daughter 2 is currently married to Spouse 1. Spouse 2 was previously married to Daughter 2. If Daughter 2 disclaims any interests in or power over the Trust, Grandchild 1, Grandchild 2, Grandchild 3, and Grandchild 4 would be entitled, as an heir of Daughter 2 under State laws of descent and distribution, to receive part of Daughter 2's Income Interest, Termination Interest and Power of Appointment. Spouse 1 is the father of Grandchild 3 and Grandchild 4. Spouse 2 is the father of Grandchild 1 and Grandchild 2. Therefore, Spouse 1 and Spouse 2 are potential heirs under certain circumstances. As used herein, Daughter 2, Grandchild 1, Grandchild 2, Grandchild 3, Grandchild 4, Spouse 1, and Spouse 2 are collectively referred to as the Beneficiaries.

The following disclaimers are proposed:

1. Daughter 2 proposes to disclaim the following: (1) a% of her Income Interest, her Termination Interest, and her Power of Appointment in the Trust; (2) b% of any additional Income Interest, Termination Interest, and Power of Appointment that Daughter 2 would otherwise receive as a result of a disclaimer made by another beneficiary of the Trust, if the disclaimer giving rise to such interest is effective on or before Date 3; and (3) any other right or power that Daughter 2 has to appoint or divest the disposition of any interest or power disclaimed above.

2. Spouse 1 and Spouse 2 each propose to disclaim: (1) b% of his future interest; and (2) b% of any other interests in or powers over the Trust, including any right or power that he has to appoint or divest the disposition of any of his future interests.

3. Grandchild 1, Grandchild 2, Grandchild 3, and Grandchild 4 each propose to disclaim: (1) c% of Daughter 2's Termination Interest; (2) b% of any additional Income Interest, Termination Interest, and Power of Appointment that he or she would otherwise receive as a result of a disclaimer made by another beneficiary of the Trust, if the disclaimer giving rise to such interests is effective on or before Date 3; and (3) any other right or power that he or she has to appoint or divest the disposition of any interest or power disclaimed above.

Each Disclaimant represents that he or she has not exercised dominion or control over any interest in the Trust, nor have they received or accepted any rights, titles, power or interests in or benefits under the Trust.

Under State Statute, acceptance by a beneficiary of an interest in a trust is presumed. A beneficiary of a trust may disclaim an interest in the trust, in whole or in part. The disclaimer must be in writing, evidencing the disclaimant's irrevocable and unqualified refusal to accept the interest, and delivered to the trustee no later than nine months after the later of (1) the day on which the transfer creating the interest in the beneficiary is made; (2) the day on which the beneficiary attains age 21; or (3) in the case of a future interest, the date of the event that causes the taker of the interest to be finally ascertained and the interest to be indefeasibly vested.

Under State Statute, a disclaimer is effective as of the date of the transfer of the interest involved and relates back for all purposes to the date of the transfer and is not subject to the claims of any creditor of the disclaimant. Unless the terms of the trust provide otherwise, the interest that is the subject of the disclaimer passes as if the person disclaiming had predeceased the transfer and a future interest that would otherwise take effect in possession or enjoyment after the termination of the estate or interest that is disclaimed takes effect as if the disclaiming beneficiary had predeceased the transfer.

You have represented that there have been no additions to the Trust after September 25, 1985.

The following rulings have been requested:

1. The Decedent had a general power of appointment created before October 22, 1942, with respect to the Trust, the release or lapse of which is nontaxable for federal estate and gift tax purposes with respect to the Decedent. The Decedent's power lapsed at her death on Date 1, and thus the Trust is not included in Decedent's gross estate. In addition, each Beneficiary's power of appointment over his or her respective share of the Trust is a general power of appointment created on or before October 21, 1942.

2. The proposed disclaimers of interests in the Trust: (a) will be qualified disclaimers and will not result in a taxable gift for federal gift tax purposes by any of the Beneficiaries; (b) will not subject any portion of the Trust to federal estate tax in the gross estate of any Beneficiary; and (c) will not result in a loss of GST tax effective date exempt status with respect to any portion of the Trust.

LAW AND ANALYSIS:

Ruling Request 1

Section 2041(a)(1) provides that the value of the gross estate shall include the value of all property to the extent of any property with respect to which a general power

of appointment created on or before October 21, 1942, is exercised by the decedent (A) by will, or (B) by a disposition which is of such nature that if it were a transfer of property owned by the decedent, such property would be includible in the decedent's gross estate under §§2035 to 2038, inclusive; but the failure to exercise such a power or the complete release of such a power shall not be deemed an exercise thereof.

Section 2041(b)(1) defines the term "general power of appointment" as a power exercisable in favor of the decedent, the decedent's estate, the decedent's creditors, or creditors of the decedent's estate.

Section 20.2041-1(b) of the Estate Tax Regulations states that a power of appointment includes all powers that are in substance and effect powers of appointment, regardless of the nomenclature used in creating the power.

Section 20.2041-2(d) provides that a failure to exercise a general power of appointment created before October 22, 1942, or a complete release of the power is not an exercise of the power. The phrase "a complete release" means a release of all powers over all or part of the property subject to the power of appointment, as distinguished from the reduction of a power of appointment to a lesser power. Thus, if the decedent completely relinquished all powers over one-half of the property subject to a power of appointment, the power is completely released as to that one-half.

Section 2514(a) provides that an exercise of a general power of appointment created on or before October 21, 1942, shall be deemed a transfer of property by the individual possessing such power, but the failure to exercise such a power or the complete release of such a power shall not be deemed an exercise thereof.

Section 25.2514-2(c) of the Gift Tax Regulations provides that a failure to exercise a general power of appointment created on or before October 21, 1942, or a complete release of such a power is not considered to be an exercise of a general power of appointment. The phrase "a complete release" means a release of all powers over all or a portion of the property subject to a power of appointment, as distinguished from the reduction of a power of appointment to a lesser power. Thus, if the possessor completely relinquished all powers over one-half of the property subject to a power of appointment, the power is completely released as to that one-half.

The Trust was created in Year, prior to October 22, 1942. During her life, Decedent was the sole beneficiary of the Trust. Under Section 3 of Article III, Decedent was granted a general power to appoint the income and corpus of the Trust. If Decedent did not exercise this power, the power would lapse at her death and Decedent's heirs under the laws of descent and distribution would, as takers in default of her exercise of the power, succeed her as beneficiaries of the Trust. Decedent did not exercise her power. Therefore, under Article III, Section 3 of the Trust, Decedent's heirs under State law succeed her as beneficiaries of the Trust.

Based on the facts submitted and the representations made, we conclude that Decedent possessed a general power of appointment created before October 22, 1942. Because Decedent did not exercise her general power of appointment, the power

lapsed on Decedent's death. A lapse of a power created prior to October 22, 1942, is not an exercise of that power. Therefore, the value of the corpus in the Trust is not included in Decedent's gross estate for federal estate tax purposes.

In addition, as discussed above, under Section 3 of Article III, each Beneficiary of the Trust was granted a general power to appoint the income and corpus of the Trust. If a Beneficiary did not exercise this power, the power would lapse at his or her death and the Beneficiary's heirs under the laws of descent and distribution would, as takers in default of his or her exercise of the power, succeed her as Beneficiaries of the Trust. Section 3 specifically states that the term "Beneficiary" applies not only to Decedent, but to all her successors to beneficial interests under the Trust. Therefore, based on the facts submitted and the representations made, we also conclude that each Beneficiary's power of appointment over his or her respective share of the Trust is a general power of appointment created before October 22, 1942.

Ruling Request 2

Section 2046 provides that for estate tax purposes, disclaimers of property interests passing upon death are treated as provided in § 2518.

Section 2518(a) provides that, if a person makes a qualified disclaimer with respect to any interest in property, then for purposes of the estate and gift tax the disclaimed interest is treated as if it never passed to that person.

Section 2518(b) defines a qualified disclaimer as an irrevocable and unqualified refusal by a person to accept an interest in property but only if --

(1) the refusal is in writing,

(2) the writing is received by the transferor of the interest, the transferor's legal representative, or the holder of the legal title to the property to which the interest relates not later than the date that is 9 months after the later of --

(A) the date on which the transfer creating the interest in the person is made, or

(B) the day on which the person attains age 21,

(3) the person disclaiming the interest has not accepted the interest or any of its benefits, and

(4) as a result of such refusal, the interest passes without any direction on the part of the person making the disclaimer and passes either --

(A) to the spouse of the decedent, or

(B) to a person other than the person making the disclaimer.

Section 2518(c)(1) provides that a disclaimer with respect to an undivided portion of an interest which meets the requirements of § 2518(b) shall be treated as a qualified disclaimer of such portion of the interest.

Under § 25.2518-1(b), if a qualified disclaimer is made, the property is treated, for federal gift, estate, and generation-skipping transfer tax purposes, as passing directly from the transferor, and not from the disclaimant, to the person entitled to receive the property as a result of the disclaimer. Thus, the disclaimant is not treated as making a gift.

Section 25.2518-3(a)(1)(i) provides that if the requirements of the section are satisfied, the disclaimer of all or an undivided portion of any separate interest in property may be a qualified disclaimer, even if the disclaimant has another interest in the same property. Section 25.2518-3(a)(1)(iii) provides that a power of appointment with respect to property is treated as a separate interest in such property and such power of appointment with respect to all or an undivided portion of such property may be disclaimed independently from any other interests separately created by the transferor in the property. Further, a disclaimer of a power of appointment with respect to property is a qualified disclaimer only if any right to direct the beneficial enjoyment of the property which is retained by the disclaimant is limited by an ascertainable standard.

Section 25.2518-3(b) provides that the disclaimer of an undivided portion of a separate interest in property which meets the other requirements of a qualified disclaimer under § 2518(b) and the corresponding regulations is a qualified disclaimer. An undivided portion of a disclaimant's separate interest in property must consist of a fraction or percentage of each and every substantial interest or right owned by the disclaimant in such property and must extend over the entire term of the disclaimant's interest in such property. See § 25.2518-3(d), Example 20, regarding the disclaimer of a fractional share of a residuary bequest.

Section 25.2518-2(c)(3) provides that, for purposes of the time limitation, the 9-month period from making a disclaimer generally is to be determined with reference to the taxable transfer creating the interest in the disclaimant. In the case of a general power of appointment, the holder of the power has a 9-month period after the creation of the power in which to disclaim. A person to whom any interest in property passes by reason of the exercise or lapse of a general power may disclaim such interest within a 9-month period after the exercise or lapse.

In the present case, Daughter 2, Grandchild 1, Grandchild 2, Grandchild 3, Grandchild 4, Spouse 1, and Spouse 2 each propose to disclaim the above-described interests in the Trust. Each disclaimer will be in writing. Each disclaimant represents that he or she has not accepted any benefits in the property subject to the disclaimers, and that the disclaimers are valid under State law. The disclaimed interests will pass without any direction on the part of any disclaimant. As discussed above, Decedent's power of appointment under Trust was created before October 22, 1942, and is a general power of appointment described in §§ 2041(a)(1) and 2514(a). Decedent did not exercise her power and, therefore, under § 25.2518-2(c)(3), the period for making the disclaimer is measured from the date of Decedent's death, the date when the interest is deemed created.

Based on the facts and representations, if the proposed disclaimers by Daughter 2, Spouse 1, Spouse 2, Grandchild 1, Grandchild 2, Grandchild 3, and Grandchild 4 are delivered to Trustee within nine months of Decedent's death, and provided the disclaimers are valid under State law, the disclaimers will be qualified disclaimers for purposes § 2518. Therefore, the disclaimers will not result in a taxable gift for federal gift tax purposes by the Beneficiaries, will not subject any portion of the value of the corpus of Trust to federal estate tax in the gross estate of any Beneficiary, and will not result in a loss of GST tax effective date exempt status with respect to any portion of the Trust. It should be noted, however, that a recipient of a disclaimed interest under the above-proposed disclaimers must disclaim that interest within 9 months of Date 1. See § 25.2518-2(c)(3).

The rulings contained in this letter are based upon information submitted and representations made by the taxpayers and accompanied by a penalty of perjury statement executed by the appropriate parties. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling is directed only to the taxpayers requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

James F. Hogan
Senior Technician Reviewer, Branch 4
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures

Copy for section 6110 purposes
Copy of this letter

cc: